IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 470 OF 2007
and
WRIT PETITION NO. 8399 OF 2006.

WRIT PETITION NO. 470 OF 2007

The President, Lasalgaon Shikshan Sahayyak Mandal ..... Petitioner.
V/s
Mrs.Hirabai Madhav Rayate & Ors..... ..... Respondents.

Mr.S.M.Sabrad, Adv. for the petitioner.

Mr.Anil Kumar Patil, Adv. For respondent No.1.

Mr.S.K.Chincholikar, AGP for respondent No.2.

WRIT PETITION NO. 8399 OF 2006.

Sau.Lata Walmik Jadhav..... ..... Petitioner
V/s
Mrs.Hirabai Madhav Rayate & Ors..... ..... Respondents.

Ms.Manjiri Parasnis h/f Mr.G.S.Godbole, Adv. For the petitioner.

Mr.Anil Kumar Patil, Adv. For respondent No.1.

Mr.S.M.Sabrad, Adv. For respondent Nos. 2 and 3.

Mr.S.K.Chincholikar, AGP for respondent No.4.

CORAM: A.P. DESHPANDE, J.
21.6.2007

PC:

As the question involved in both writ petitions is the same and the facts overlap, both these writ petitions are hear together and are being disposed of by

this common order.

2. The parties are referred to as shown in Writ Petition No.470 of 1007. Writ Petition No.470 of 1007 challenges an order passed by the Presiding Officer, School Tribunal and writ petition is filed by the School Management. The same order passed by the School Tribunal is also challenged in Writ Petition No.8399 of 1006 by respondent No.4 in Writ Petition No. 470/07. Few facts that are necessary to decide the question are narrated herein below.

3. The respondent No.1 came to be appointed on 1.7.1986 as Assistant Teacher in secondary school. At the time of initial appointment respondent No.1 was trained graduate teacher possessing qualifications of B.A., B.Ed. Though the petitioner was eligible and qualified for being appointed in B.Ed. scale she was in fact appointed in D.Ed scale. Respondent No.4 for the first time came to be appointed as Assistant Teacher with effect from 20.6.1988 and since the date of initial appointment respondent No.4 was appointed and granted B.Ed. scale.

4. Respondent No.1 was terminated from service with effect from 16.6.1988 and aggrieved thereby respondent No.1 challenged the termination by filing an appeal before the Tribunal. Respondent No.1 succeeded in appeal before the Tribunal and aggrieved thereby the Management filed writ petition in this High Court. The said writ petition came to be dismissed and the order passed by Tribunal in favour of respondent No.1 was confirmed. Thereafter the present petitioner/management filed Special Leave Petition in the Supreme Court and the learned counsel for the petitioner fairly states that the Supreme Court dismissed the Special Leave Petition and thereby confirmed the order of reinstatement passed by the School Tribunal. Thereafter the petitioner had to reinstate respondent No.1 and reinstatement was granted on 13.10.1993. With effect from 1.4.1996 respondent No.1 was also granted B.Ed scale. Respondent No.1 in the year 1997 filed civil suit against present petitioner claiming difference of her salary in B.Ed and D.Ed. scale. The suit instituted by respondent No.1 came to be dismissed in the year 2001 and I am informed that appeal carried before the

District Judge by respondent No.1 is pending adjudication. The present petitioner in the above facts situation prepared a seniority list sometime in the year 2002 and circulated th same amongst the employees. Respondent No.1 has signed the seniority list. It is the case of the respondent No.1 that all throughout she has been raising objections to her placement in the seniority list as she is shown junior to respondent No.4. Respondent No.1 also claims to have mad representation to the Education Officer in regard to her wrong placement in the seniority list presumably under rule 12 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules. The present petitioner promoted respondent No.4 on 1.12.2004 to the post of Assistant Head. Aggrieved by the said promotion respondent No.1 preferred an appeal before the Tribunal under section 9 of the Act. The Tribunal by placing reliance on Division Bench Judgment of this Court in the case of ***Saramma Varghese*** v/s ***Secretary/President, S.I.C.E.S. Society***, 1989 Mh.L.J. 951 allowed the appeal filed by respondent No.1. Aggrieved by judgment of the School Tribunal the present writ petitions are filed.

5. After examining the scheme of the Act and the Rules so also the provisions of the Secondary School Code, the Division Bench laid down principles flowing from the Rules in para 23 of the judgment. The first principle lays down that the Act and the Rules clearly stipulate that all teacher having B.A., B.Ed and B.Sc., B.Ed rank together for the purposes of fixation of seniority. (Note 1 paragraph 2, Schedule F to the Rules). The second principle deduced by the Division Bench is that the act and the rules do not make any distinction based on the division of the school in which teacher teaches and the third principle with which these petitions are concerned reads thus:

> "Thirdly, the Rules and the Code reject the relevance of pay scale for the purpose of seniority. That is why Note 8 quoted at foot-note 26, enjoins the School to prepare a combined seniority list of teacher, notwithstanding the fact that trained graduate teachers in Junior Colleges draw higher scale

of pay."

The last principle lays down that the only criteria for fixation of seniority of trained graduate teachers is the continuous officiation in such post of teacher. Thus relevant rules reject the criteria of pay scale for determining seniority, whether teacher is receiving salary in B.Ed or D.Ed scale is wholly irrelevant. What is relevant is date of initial appointment and the educational qualifications. Seniority in category ` C' of Schedule F has to be determined from the date of entry of teacher in the said category. Respondent No.1 has entered category ` C' right on the date of her initial appointment i.e. 1.7.1986. Whereas respondent No.4 entered category ` C' on 20.6.1988 viz. the date of initial appointment of respondent No.4. It is thus obvious that though the respondent No.1 is senior to respondent No.4, the respondent No.4 is shown senior and granted promotion to th post of Assistant Head, only for the reason that initially respondent No.1 was granted lesser pay scale viz. D.Ed. pay scale whereas respondent No.4 has been receiving B.Ed pay scale right since date of her initial appointment. The School Tribunal has rightly held that the petitioner has illegally treated respondent No.4 as senior to respondent No.1 and thus grant of promotion to respondent No.4 amounts to supersession of claim of respondent No.1to the promotional post of Assistant Head Mistress. Learned counsel for the petitioner contended that respondent No.1 did not approach the Educational Officer under Rule 12 by raising objection. Whereas respondent No.1 claims to have moved the Education Officer. In my view, nothing much turns on that for the obvious reason that the case of action for respondent No.1 for filing an appeal was grant of promotion to respondent No.4 on 1.12.2004. Perused the order passed by the School Tribunal. Same does not suffer from any illegality warranting interference in exercise of writ jurisdiction. Hence writ petitions are summarily dismissed.

5. At this stage learned counsel for the petitioner prays for stay of this order for a period of eight weeks. Prayer is opposed by learned counsel for respondent No.1. Having regard to the fact that the order passed by the Tribunal has been

stayed by this Court since December, 2006, I find the request made by learned counsel for petitioner seeking stay of this order to be just and reasonable. This order shall stand stayed for a period of six weeks.

21.6.07.